

“Give the Constitution a Chance”

THE
ELECTORAL COLLEGE

PREROGATIVES AND POSSIBILITIES
A PRESIDENTIAL PREFERENCE VOTE
THE PRESIDENT'S TERM

By

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THE ELECTORAL COLLEGE.

I. PREROGATIVES AND POSSIBILITIES.

(From the Forum for November, 1912.)

The devolution of the executive power has ever been the weak spot in systems of government. When ancient nations outgrew the primitive idea of the divinity of their kings, the problem of transmission of supreme power from ruler to ruler was solved by the strong man with the sword. With the exception of the few most enlightened peoples for comparatively brief periods of their career, the progress of nations has been checkered by wars and massacres to determine the sovereignty.

The governments of Europe enjoyed little stability till the principle of hereditary succession became fixed in their constitutions. Where this principle was imperfectly recognized there was turmoil; where it failed entirely extinction followed. It is not necessary to cite illustrations of these propositions from English and Continental or ancient history, nor to argue the perils of republics in the revolutions of our American neighbors.

Therefore, when a people undertake to select their own rulers the method of doing so is of the utmost importance. In its every step, in all its procedure, it must be simple, direct, easily understood. There must be no elaborate and involved minutiae out of which confusion may arise or into which uncertainty may be injected by designing persons.

NEW WAY CHOSEN.

When our ancestors threw off royal rule the old problem faced them, and in the Constitutional Convention this was regarded as one of the most difficult problems. There were no satisfactory precedents. Many of the Delegates were versed in history, but they learned therefrom of the wreckage of states through feebleness of the executive power or imperfect methods of its transmission. After most careful consideration of various plans they adopted the method of election of the President by Electors "appointed" in the several States and equal in number to the Senators and Representatives in Congress. They rejected, after thorough discussion, the proposal of election by suffrage of all the voters, possibly because they distrusted the people, as has been alleged; perhaps also because they saw that election by general ballot would not be a real choosing by the people.

The persons to be voted for must be selected, designated, nominated by some mortal agency. That agency, unless a single dictator, must be a body of men small enough for discussion. Consequently some

junta or caucus would dictate candidates; that is, select the President. In order that this service might not fall to an irresponsible oligarchic body, the authors of the Constitution created a responsible body, clothed with full and final power to both choose and elect, exercising this power under the solemn sanction of an oath of office and duty to the people, by whom now they are directly elected. This body was to represent as nearly as possible the States and the people of the States and to embody their highest wisdom and virtue. Meeting as "a Grand Electoral College," it was to be at once the nominating convention and plenary elective agency of the Nation.

ELECTORS PARALYZED.

There can be no doubt but the Electoral College in this form would have proved itself a reality, would have vindicated its prerogatives and actually chosen our Presidents to this day. Its members would not have tolerated dictation from without, but would have procured immunity from pressure and undue influence through protective statutes enforced by the courts. But most unluckily the convention changed its perfected plan at the last moment, and thereby unwittingly negatived its own will. In apprehension of the difficulties and expense of travel in that day, the electors were permitted to meet and vote in their several States. Thus the power of making a choice was annihilated—the electors were paralyzed in their essential function.

Bancroft summarizes substantially as follows:

And now the whole march to the mode of election of the President may be surveyed. The Constitutional Convention at first reluctantly conferred that office on the National Legislature, voting in joint ballot. To escape from danger of cabal and corruption, it next transferred full and final power of choice to an electoral college that should be the exact counterpart of the joint convention of the two Houses of Congress in the representation of the States, as well as the population of the States, and should meet at the seat of government. * * * From confidence in the purity of the electoral body thus established, the reeligibility of the Executive was again affirmed. * * * Then, fearing that so large a number of men would not travel to the seat of government for that single purpose, or might be hindered on the way, * * * nor would the first characters in the State feel sufficient motives to undertake the electoral office, * * * the thought arose that the electors might cast their votes in their own several States and transmit the certificates of the votes to the General Legislature. (History of the Constitution, Vol. II, p. 184.)

Why the fatal result of this afterthought was not foreseen may be partly explained by conditions then existing. In the person of Washington, the immediate candidate for all electoral votes needed no nomination, and several other statesmen stood forth so distinguished by great services that the inevitableness of contemporary selections obscured the fact that the first step in the process—the agreement upon a person on whom enough votes could be concentrated to effect an election—would be the prime difficulty of all. Also, the committee of correspondence was a familiar agency of that time. Through committees of correspondence, worked up by the Revolutionary patriots in the New England towns and in the counties of the Middle and Southern colonies, public sentiment had been roused and united, agreement on policies and concert of action brought about. By their means, conventions had been called and the colonial assemblies had been influenced to send delegates to the

Continental Congress; all the machinery which carried through the war for independence and the formation of the Constitution had been created. The expedient of correspondence among the electors might be used to effect a unity of choice. But if this was regarded as the appropriate means, it was speedily nullified, not only by other influences, but by legislation which required the electors to give and certify their votes one month after their own election, allowing no sufficient time for correspondence. (The time was extended by an act of 1887 to the second Monday in January.)

However this may be, as soon as it became necessary really to make and agree upon a choice the electors found themselves powerless to do so. They therefore accepted such advice as was tendered or forced upon them from without. In the early years of the Republic the needed advice was supplied by various self-constituted caucuses or committees, which in turn assumed the function, until finally, with the stronger organization of political parties, the national nominating convention became an established institution. Now the choice is actually made by a voluntary extra-legal and irresponsible convention, or some clique within such a convention. It is accomplished, not through wise deliberations, but through every art of political strategy, accompanied with excitement and uproar. The reality of this extralegal choice is not affected by the custom that two or more conventions present rival candidates, from whom the people indirectly select one. The fact remains that one of these conventions chooses the President in the first instance and thus usurps the power of a constitutional body elected by the people. In so doing it usurps the rights of the people themselves.

That the people are aware of and deeply dissatisfied with this usurpation of their rights by irresponsible conventions is evidenced by the rapid spread of the system of primary elections, the enactments of several States, and the numerous bills in State legislatures and in Congress proposing to elect delegates to party conventions by popular vote and to instruct them as to candidates by party primaries. This paper endeavors to show that such bills as to presidential elections are framed on erroneous principles.

HARD TO DEVISE PLAN.

In the first place, the law ought not to attempt to control politics. In his politics and religion the citizen is free. It has ever been our theory that the voluntary activities of citizens in forming parties, assembling in conventions, and carrying on political campaigns are outside the sphere of law; that legislation is for the whole people, recognizing no sects, parts, or parties. Accordingly, it is improper for the law to prescribe the election of delegates or provide for instructing them or regulate the holding of conventions. But the law may altogether prohibit such activities, whether in or out of conventions, so far as they impair the freedom of any constitutional agency of the Government.

Furthermore, it is believed that no plan of electing delegates to party conventions and expressing presidential preferences and certifying such preferences and instructing such delegates can be devised, which will not violate the necessary rule of simplicity and seriously impair the political liberties of the citizen. On inspection of a few

proposed bills, one is astonished at the elaborate and complicated provisions and minute instructions and enormous expense found necessary to make the system effective. The enactment of such a measure would raise up a class of specialist lawyers and professional politicians to operate it, and the consequent reign of confusion is frightful to contemplate.

Again, it is doubtful whether the people would remain satisfied with such a system. They have recognized the abuses of huge conventions, which become more glaring with each perpetration. The people are turning to the primary election, which they desire as a substitute for, not an aggravation of, the nominating convention. They wish to express their preferences among presidential candidates, but they do not wish their expression to pass through the medium of party conventions. Such a medium is highly undesirable, and it is emphatically urged that it be not fixed by law upon our electoral system.

To complicate the preferential primary with the national conventions would be a calamity of the first magnitude. Little less calamitous would be the elaborate hierarchy of State boards and national boards, composed of salaried members appointed by the President, which are the substitutes proposed for the certifying function of party conventions. The extent to which these bills propose to regulate elections appears to infringe upon the province of the State legislatures, to which the Constitution gives the power to determine the manner of appointing the Electors. All these difficulties are avoided by prohibiting any form of dictation either to the people as voters at large or to their chosen Electors. Let there be party organizations to proclaim and promote party principles, but let there be no nominating of candidates for President by caucuses, conventions, or petitions in advance of the general election. Party activity may be directed to the nomination of candidates for electors to be chosen under State laws. Here party organizations may have free scope to bring forward robust partisans, who, if chosen electors, will fight vigorously for party principles and party men.

ELECTORS SHOULD MEET.

The influence of the people will be profoundly felt by the electors. They are the responsible agents, elected and commissioned by the people; they are themselves of and from the people, among whom they live and move and have their being. They know and feel the popular sentiments, in which they fully share, and in the performance of their duties they will prove a sensitive reflector of public opinion. Why, then, should there be two or three or more enormous assemblies to pervert or color the popular will, when the Constitution has created a body duly elected, authorized, and competent to receive and express that will? It is only necessary to call it together.

In those words is the key to the question. While the Constitution requires the electors to meet and vote in their several States, it nowhere prohibits them from assembling in a body for consultation. Indeed, as has been shown above, such was the perfect plan in its original form. They were to meet in convention and both choose and elect. The change which rendered them powerless to choose was made on account of the expense and difficulty of travel, a reason

which no longer exists. The reason having passed for that feature which defeated their excellent plan, it seems a duty to our Revolutionary fathers to eliminate the obstruction and make their plan workable. Let the electors be called together to nominate candidates and then return to their States to cast and certify their votes. For this no amendment to the Constitution is necessary, nor, *theoretically*, the enactment of any law. They have a perfect right to do this of their own motion, and no court nor magistrate could say them nay. If the electors appointed November 5 should immediately assemble in the city of St. Louis and agree to elect Senator La Follette President and Representative Underwood Vice President, and should afterwards cast a majority of votes for those gentlemen in the manner prescribed by law, such election would be valid in every respect. But *practically* the electors can not hold a convention without help from Congress. Dispersed over the whole country and without organization or power of initiative, they can not well agree upon a place of meeting and make preliminary arrangements; nor can they be expected to render such service without compensation and at their own expense. Congress should, therefore, provide for the meeting of the electoral college in convention at some city centrally located and make suitable appropriation therefor.

For other reasons legislation is necessary. Electors can not and will not disregard the dictation of party conventions, so long established in the thought and customs of the land. As has been argued above, the law ought not to regulate the voluntary political activities of citizens; but it ought to prohibit all activities which impair the freedom of any lawful agency of the Government. There are laws to protect the Congress and its Members in their absolute freedom; laws to protect the Executive and the courts. Now the Electoral College, let it be repeated again and again, is a governmental agency of the highest importance, embedded in the Constitution itself and clothed with the most solemn responsibility. Accordingly, the nomination of candidates for President or Vice President by unauthorized agencies or assemblies should be prohibited.

SYSTEM IN PRACTICE.

It may be interesting to consider how the system here advocated would work in practice. Assume that in the year 1916 there have been no nominating conventions and no persons have been proclaimed candidates for President and Vice President. The Electors numbering 531, have been chosen at the November elections by direct vote of the people, and Congress has designated a central city and made suitable appropriation for the meeting. The College assembles, chooses temporary officers in the usual manner, by whom the roll of members is made up, and the body conducted to a permanent parliamentary organization.

The College adopts such rules as may be necessary for its special work and proceeds to business. Candidates will naturally be presented in nominating speeches, and there will be a lining up of Electors by parties. If the smaller parties of the country—the Socialist, the Prohibitionist, Woman's Suffrage, or Labor Party—have chosen any electors, these will doubtless make themselves heard and may wield some influence. Under present conditions, the real contest

will be between Republicans and Democrats. Party caucuses will be held, in which different factions will contend for their favorites, and the name agreed upon by the Electors of each party will be submitted to the College. The voting will be conducted in any manner the body may order, viva voce, by count of heads, by call of the roll, by ballot, or otherwise, and if one party has a majority a nomination will easily be made. If there be no majority of any party, there being three or more parties represented, the situation may become difficult, but always less difficult and with better chances of solution than in elections by the House of Representatives under existing constitutional rules. The College will appreciate its imperative duty to nominate a candidate who will receive in the formal election a majority of all the electoral votes. The wisdom and patriotism of such an assemblage will find a way. A rule of elimination, dropping the name or names lowest on the list after each voting, would speedily effect a nomination, and enough members of the least numerous party or parties might pledge their electoral votes to the candidate thus named to assure his election. A candidate for Vice President having been chosen in the same manner, the electors will return to the several States and, assembling in their capitals on the day appointed by law, will give, certify, and transmit their votes in the regular manner, the nominees of the convention receiving a safe majority. Indeed, so beneficent a change in our party life might be expected with the disappearance of long and irritating personal campaigns that after a fair and open contest in the assembled College the formal election might often be practically unanimous.

Thus the election need never be thrown into the House of Representatives—an expedient which has proved in the past unsatisfactory and perilous. Witness our narrow escape from the election of Aaron Burr, averted by the change of a single vote after many ballots; witness the deep chagrin of a growing majority at the defeat of Gen. Jackson, engendering bitterness which survived many years; witness also the extreme perils of the Hayes-Tilden controversy. And the present situation is very grave. The uncertainties of an election by the existing House have been forcibly pointed out. The declaration of nominees in several States that if chosen Electors they will vote for candidates other than those of their party; the efforts to enjoin such action in the courts; the resignation of nominees from the electoral ticket; the projection of rival tickets into the field denote confusion which may in a few weeks develop into a contest as undesirable as any in the past.

II. A PRESIDENTIAL PREFERENCE VOTE.

[From the Forum for December, 1912.]

In a former article it was urged that Congress, by a brief enactment, assist the electors to assemble in convention for the purpose of nominating candidates for President and Vice President, and prohibit conventions and other extra-legal agencies from forestalling the choice of the Electoral College. It was shown that the Electors have the constitutional right so to assemble and nominate, and that party conventions are purely voluntary, irresponsible bodies, acting without warrant of law.

Why there was no legislation in early days to give efficacy to the constitutional mode of selecting the President when it was found the electors were powerless to choose, may easily be imagined. Before the situation was understood the legislative department had assumed to itself the power of nomination through caucuses of its members, and if it occurred to them that Congress was in duty bound to provide a way for the Electoral College to exercise its powers they were doubtless blinded by their own partisan ambitions. Now, however, since the function of nomination has been usurped by other agencies, the Congress may see the wisdom of restoring it to the constitutional body to which it rightfully belongs.

The Electors are "appointed" by direct vote of the people. Though elected on a general State ticket, it is the invariable custom to put on that ticket a resident of every congressional district. Thus the Electors are known personally or by reputation to the people among whom they live. They may be designated by primary elections, and they constitute a truly representative body, knowing and sharing in the opinions of their constituents. They are a fit body to choose the President, because they are a sensitive index of public opinion. This reason influenced the constitutional convention in determining the mode of election, the mode adopted being thought the best of all that were proposed to interpret and carry out the people's will.

Gouverneur Morris wrote, in 1801:

It was inferred that the mode least favorable to intrigue and corruption, that in which the unbiased voice of the people will be most attended to, and that which will be least likely to terminate in violence and usurpation, ought to be adopted.

And the Federalist, No. 68.

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body but to men chosen for the special purpose and at the particular conjuncture.

LEFT TO OWN JUDGMENT.

But to know the will of the people the Electors were left to their own understanding. No systematic method of the people themselves expressing their will was provided. Indeed, such method could not be provided in that age. Methods of voting were extremely crude, and it is only in our own day that a really effective ballot has been devised, while the idea of primary elections of candidates is most recent. Meantime, to aid the Electors, left powerless by the requirement to give their votes in their respective States, nominating conventions sprang up, and they have attained a rank growth, imposing upon the Electors as the will of the people the results of Homeric wrangles of politicians.

But the day of the convention is said to be past. Since the highly unedifying spectacles of last summer nearly every newspaper and periodical has so predicted, in language more or less temperate, the following in an esteemed contemporary being taken as a sample:

With the horrible example of this year's fluke staring them in the face, would Congress be willing again to trust the old corrupt, vicious, broken-down system of nominating a President?

Our judicious historians entertain the same opinion. Dr. James Schouler wrote in 1908:

We have changed in national modes of nomination and are likely to change again. Nominations by a congressional caucus, the earliest settled practice, passed into disrepute and disuse some 80 years ago, nor did the plan of State nomination by legislatures long satisfy as a substitute. National party nomination in convention by delegates from all the States, our present mode, is already an expensive contrivance, not to add loosely representative in character, and each new experience increases its cumbrous inconvenience. Some other method must presently be contrived. (*Ideals of the Republic*, p. 229.)

Though many a political convention has been a public scandal, yet much may be said for the convention as an institution. It is a spontaneous growth of our political life, serving greatly to awaken interest in affairs of government, to inform and formulate public opinion; also it has been fairly successful. The national convention, supplying a deficiency in the Federal Constitution, has generally presented a statesman or soldier of distinction and ability. However, it is an excrescence upon the body politic and ought to go, and with it the whole fabric of presidential campaigns, of which it is the foundation. The country has grown too big for the system, the conventions too unwieldy, the expenses too enormous, the excitement too intense. This would apply with even greater force to an election of President by direct popular vote.

TOO MUCH PARTISANSHIP.

We have too much of parties and partisanship. Our nation-wide campaign is a gigantic evil; its unifying influence no longer needed, its educative value negative, its vast expenditure worse than waste, its irritating effects thoroughly unwholesome. The shameless vituperation of public men, the unscrupulous misrepresentation of policies, the lurid picturing of outrages past and horrors to come, have too often roused the unthinking to madness, and may be held responsible for the assassination of one-third of our Presidents elected since the Civil War. With this evil record, the worst among modern nations, we still industriously cultivate the tree that bears such fruit, our system of frenzied politics. But let the personal element be eliminated and the President be found without candidates and without campaigns. Hero worship, loyalty to the chief, has been of much social value in past ages, but it is a sentiment now fit rather for subjects of an empire than for enlightened citizens of a republic. We boast that we are ruled by law, not by men. Therefore, let us attend more to policies and measures than to the personality of candidates. So shall our political development be along intellectual lines, promotive of a higher prosperity.

The substitute offered for conventions is the nomination of candidates by primary elections, each party voting separately among candidates designated in advance by petition or some such method. The objections of confusion, cumbrousness, intricacy, and expense, in attempts to apply this scheme to presidential elections, were discussed in the former article referred to; but also this system recognizes, and perpetuates by law, parties and party organizations. In view of the developed political capacity of the electorate, it is right and possible for the people to express their wishes respecting candidates

for the offices of Government, and the best means possible should be devised for a full and effective expression thereof. But by no means should the presidential preference pass through the medium of party conventions. Such a medium is wholly unnecessary and altogether obstructive. Most emphatically it is urged that the people, in undertaking to advise respecting the presidency, address their advice directly to the responsible agents commissioned by them and vested by them with authority to act thereon—that is, the Electoral College lawfully assembled.

SIMPLE METHOD PROPOSED.

This desirable expression of presidential preferences by the voters at large may be given in a simple and effective manner, with scarcely any addition to the labor involved in casting and collecting the ballots. Naturally the preference vote should be given in connection with the vote for electors, and such would be the case in practice: but in legislating upon the subject, in order to avoid all questions of validity, inasmuch as the power to determine the manner of “appointing” the Electors is vested in the State legislatures, Congress would wisely connect this vote with the vote for Representatives, a subject over which that body has complete jurisdiction, as is placed beyond doubt by the Supreme Court in the following language:

So in the case of laws regulating the elections of Representatives to Congress the State may make regulations on the subject; Congress may make regulations on the same subject, or may alter or add to those already made. The paramount character of those made by Congress has the effect to supersede those made by the State, so far as the two are incompatible, and no further. (Ex parte Siebold, 100 U. S., 386. See also ex parte Yarborough, 110 U. S., 651; and Wiley v. Sinkler, 179 U. S., 62.)

A paragraph in the act for assembling the electoral college should provide that in the years when a President is to be elected there shall be printed on the ballots used in voting for Representatives in Congress words to this effect, “Here the voter may write the name of his choice for President of the United States,” and below them a blank line; and when the ballots are counted in each State all names written on said line by the voters which have received more than 1,000 votes each shall be tabulated with the number of votes for each, and the tabulation shall be certified to the Electors and shall be published.

When the Electors assemble in convention, those from each State will present the tabulation with which they have been provided, and thereupon a consolidated table will be compiled showing in proper order all the names that have received more than 1,000 votes in any State, the number of votes given to every name in each State, and the total number of votes for every name in the whole Union. Remember, that the people have, without prior nominations or dictation from any source, out of their own knowledge and best wisdom, given these votes. The Electors will thus have reported to them the real voice of the people, but speaking a various language. From every State there may be several or many names, and without doubt the best-qualified men of the Nation will be in the lists. It will be the task of the Electors to analyze the lists and determine what is the highest expression of the people’s will. They will mark a number of names that have received the largest totals of votes and those whose votes are derived from the greatest number of States, and

among those found to be general favorites they will consider the elements of distinction, past services, and qualifications. Each Elector will give to the varying elements such weight as his own judgment and conscience approve, and the results of their deliberations can not fail to be more satisfactory to an enlightened country than are the fortuitous conclusions of our national conventions.

As judges, Senators, and Representatives are protected by law in the performance of official duty, so the Electors should be assured of perfect independence and guarded from all sinister influence by a carefully drawn corrupt-practices act.

ELECTION OF ELECTORS.

To complete the discussion of this question something should be said of the manner of "appointing" the Electors, though this is not within Federal jurisdiction. Being left to the State legislatures, various modes were employed, each suited doubtless to local conditions. In certain States the legislatures themselves appointed them, in others they were elected by congressional districts, in others all were voted for upon a general State ticket. The last mode has come to prevail, because it gives an advantage to the majority, and the party in power wants and expects to get all the electoral votes. But election by congressional districts was preferred by the early statesmen. Wilson, Gallatin, and Hamilton expressed themselves strongly to that effect. Jefferson wrote:

A most favorable event would certainly be the division of every State into districts for the election of Electors.

And Madison reported:

The district mode was mostly, if not exclusively, in view when the Constitution was framed and adopted. The States when voting for President by general ticket are a string of beads. When they make their election by districts, some of these differing in sentiment from others and sympathizing with other districts in other States, they are so knit together as to break the force of those geographical and other noxious parties which might render the repulsive too strong for the cohesive force within the political system.

Certainly the district system of election seems the fairer, as it would give voice to majorities in the several districts which might be different from the majority in the State as a whole, and it would render the Electoral College more nearly the counterpart it was intended to be of the National Legislature. Logically, the Electors corresponding to Representatives, ought to be elected in the same manner and by the same constituencies as the Representatives, while the two that correspond to Senators should be elected by the State at large. Thus, also, would the College become more intimately representative of all the people of all the States.

PROPOSED PLAN CONSTITUTIONAL.

The plan here advocated would give the Constitution a chance. It is a restoration of the system designed by the creators of our Government, with important modifications required by the developed capacity and enlightenments of the electorate. They intended that "the sense of the people should operate" through a body of men assembled from every part of every State and knowing the popular will from their intimate relations with the people. It is here proposed that the body of chosen delegates shall receive directly the ad-

vice of the people, their own personal knowledge supplemented by the popular-preference vote. Such a combination of the old and new methods would go far toward taking the presidency out of politics, as it was conceived by the fathers. To them the States were the familiar theaters of party contests, their varying interests causing divisions within themselves on diverse issues. Supposing that partisan contentions would be confined within State boundaries, they beheld the National Executive raised above parties, presiding impartially over the destinies of federated States. This is a nobler, grander ideal of the presidency than the reality it has become, a party chief raised to power by methods which, in winning him victory, have also won distrust.

The Presidency of this Nation is too splendid a prize to be safely thrown into the arena of personal ambition. It should be bestowed unsought, the office seeking the man. If it be objected that this plan is undemocratic, it should be answered that it is possibly the most truly democratic that can be devised for a large constituency. Pure democracy can only be exercised over a small area, where the entire body of voters in mass meeting pass ordinances and elect officers, as in Swiss cantons and New England towns. When the political unit is enlarged, composed of many parts, its democracy becomes forthwith representative. Representatives are chosen to enact laws affecting every vital interest, and by representatives our Presidents are, in fact, selected. The question here is whether these shall be self-constituted representatives, the bosses of disorderly conventions, or shall be the body created for that especial service by our venerated Constitution. Should the satisfaction of expressing by ballot a choice among candidates A, B, C, and D, dictated severally by agencies over which we have no control, be greater than that of accepting finally a choice made by agents lawfully elected and advised by the people and responsible to them for the proper execution of their solemn trust? A choice made by the people through their grand committee, the Electoral College, would be truly their own choice. There is no conceivable machinery through which they could act more directly with more reality of control.

As has often been remarked, the authors of the Constitution builded better than they knew. In devising only the principal great agencies of government, with only general specifications and restrictions of power, they created an organism which has harmonized with all environments, proved equal to every new condition, and controlled successfully an undreamed-of expansion. As provisions little understood have been found of vital efficacy when brought into action by legislative enactment or judicial decision, to meet arising needs, we may be sure our ancient charter holds latent the means of present safety. Some statesman of the early days, divining the tremendous potency of the commerce clause, called it "a sleeping giant in the Constitution." So "that abandoned provision, the electoral college," may prove to be a veiled savior.

III. THE PRESIDENT'S TERM.

(From the Washington Herald, Jan. 12, 1913.)

The reasons for limiting a President of the United States to one term, whether of four or six years, have been ably presented in the Senate, to the effect that the efforts of the incumbent and his sup-

porters to elect him a second time are a prolific source of political corruption and demoralization of public business, including misuse of the power of appointment, solicitation of aid from wealthy interests with the hope of favor in return, collection and expenditure of huge campaign funds, influencing of legislation by the use of patronage, packing of nominating conventions, coercion of officers and employees of the Government and of corporations in their exercise of the suffrage. The effects upon the President are said to be degrading, distracting his attention from the duties of his office, converting him from the head of the Nation to the chief of a party, and forcing him upon the stump as a partisan campaigner, to the great impairment of his official dignity.

These evils seem to be not at all inherent in the office or the conditions which properly surround it, or in a second term, but morbid growths from our system of selecting candidates. To-morrow the Electors "appointed" at the general election November 5 last, will assemble in their several State capitals, record their votes for President and Vice President, and certify the same to Congress, to be opened and counted in the presence of the two Houses on the second Wednesday in February. Needless to say the electors have had no voice in selecting the persons for whom they will vote. These have been designated by certain irresponsible assemblages of politicians, held last summer with more or less credit and eclat.

DEPARTURE FROM CONSTITUTION.

This system of selection is a wide departure from the constitutional method, which was ideal in intention. The Constitution provided that the President should be chosen by the Electors of all the States, equal for each to the number of Senators and Representatives. As was probably necessary at the time, in view of diversity of conditions in different parts of the country, the manner of "appointing" Electors was left to be determined by the legislature; but through the steady growth of Democratic sentiment it came about in 70 years that all the Electors were elected by direct vote of the people. Thus they are now chosen, and if they were permitted to assemble in convention and nominate the candidates for whom their formal votes should be cast, the system would indeed be ideal.

In recent articles in the Forum I have shown how the authors of the Constitution provided at first that the electors of all the States should assemble as a "Grand Electoral College," and both select and elect the President; but afterwards, in view of difficulties of travel, arranged that they should meet in the States and certify their votes to the Congress. Thus the Electors were rendered powerless to make a choice and were consequently compelled to accept and vote for candidates dictated by congressional caucuses, and later by party conventions, but Congress ought to authorize the electors to assemble for conference and the nomination of candidates. Nominating conventions then would be needless, and ought to be prohibited as forestalling the choice (i. e., impairing the freedom) of the Electors, who are constitutional officers of the Government.

In electing the Electors themselves, the most improved devices of democracy (such as nomination by primary election in each con-

gressional district) should be employed, to procure men representative individually of their constituencies, and collectively of the public opinion of the Nation. The electors should also be advised by a presidential preference vote of the people, given without previous nomination, and properly tabulated for study. Thus selected and thus instructed, the Electoral College would be the best agency possible for electing the President. On election day we, the entire body of voters, would deposit our ballots, every voter of us having written on his ballot (if he so desired) the name of his preference for President. By the same ballots we would appoint from among ourselves a committee of respectable citizens to sift and analyze our preference votes and select the best man. The procedure of this committee of 531 Electors has been explained in the former articles.

Let it be conceded at once that the election of President by direct vote of the people (if any regard such method as desirable) is unattainable. By that method the voting population would act en masse, State lines would be obliterated, and the smaller States would lose the advantage secured to them by our Federal system in giving them a vote in the college for every Senator and Representative. Also previous nominations would be more necessary than ever, and the voters would become more than ever the blind puppets of irresponsible conventions. The States will hesitate a long time before amending the Constitution in this line. But by very simple legislation, and without change in the Constitution, we may perfect our present system so it will operate as the fathers intended, furnishing a lawful nominating body and authoritative election agency. I believe careful reflection on the subject will convince candid minds that the people will influence and control the election of Presidents, as far as it can be controlled by them, when their grand committee, the Electoral College, exercises its full powers.

LENGTH OF TERM A SUBJECT FOR PLATFORMS.

The effective operation of the constitutional method of election would cure the abuses alleged to result from the possibility of re-election. The length of the President's term and his eligibility to successive terms were fully considered by the fathers. For weighty reasons, after debating proposals of six years and seven years, they adopted a term of four years and declined to restrict the number of terms. Recall Bancroft's narrative respecting the mode of electing the President:

The Constitutional Convention at first reluctantly conferred that office on the National Legislature, voting in joint ballot. To escape from danger of cabal and corruption it next transferred full and final power of choice to an Electoral College that should be an exact counterpart of the joint convention of the two Houses of Congress and should meet at the seat of government. * * * From confidence in the purity of the electoral body thus established, the reeligibility of the Executive was again affirmed.

Their thought was that if the President were elected by the Congress or by popular vote he ought to be limited to one term, which might be as long as seven years, but if chosen by a carefully selected college of electors great advantage would result from a shorter term with eligibility to reelection. A President who should prove a failure would not burden the country overlong, while the services

of an able and popular President would be extended almost as a matter of course by a quiet reelection. From Washington we received the unwritten law of two terms only. With that limitation, the Presidency is so admirable an institution per se that the most radical progressives and most timid conservatives may well unite in keeping it as it is. The reeligibility of the Executive renders the office adaptable to the character of the man and the circumstances of the times, and a self-governing enlightened people may safely remain the guardian of the two-term tradition. The establishment of a one-term rule also ought to be left to the people without constitutional restriction. This question has as yet received little general discussion, but is properly a subject for party platforms as a means of testing public opinion.

The fault is in our system of nominating candidates and conducting campaigns, and thither ought the efforts of reformers to be directed. Party organizations are purely voluntary and their nominating conventions altogether irresponsible. The will of the people has but a remote influence over them, and they present candidates who may be or may not be the choice of a majority even of their own party. The candidates then spend laborious months, each striving to prove himself acceptable to his own party and then to win enough support from other parties to insure his election. The personal element is exaggerated, abuse and misrepresentation are rife, money is collected dubiously and expended injuriously, excitement prevails, business suffers, issues of principle and policy are neglected. If the President be a candidate, he is charged with using the Federal patronage and all the powers of his office to secure his nomination and further his election. Recent events furnish pointed illustrations. One of our distinguished publicists writes:

For nearly 20 years two powerful and interesting personalities have dominated the imagination of large elements of the American people, and when either of them is before the electorate as a candidate for high office it is almost impossible to secure discussion of any political proposal save with reference to his personality. The effect of this limitation upon our political life has not been happy. Passionate feeling has been aroused at a time when cool reason was most necessary, and blind personal advocacy or blind personal antagonism has taken the place of statesmanlike examination of principles.

WOULD CORRECT ABUSES.

Under the correct system there would be none of all this. There would be no need of it and no opportunity for it. The candidate would not be in evidence until the last act of the drama, but his way would be prepared by statesmen and publicists proclaiming party purposes and expounding party doctrine through conventions, the press, and public speeches. The people would then select by the best means that can be devised a body of men whom they know or can know all about, to act as their "grand committee" in naming the President, under such instructions as it may be possible to give by a popular preference vote.

It is objected that the Electoral College would be subject to severe pressure and violent solicitation, and might be corrupted or purchased outright. This is only to say that electors are men. Men are mortal and fallible, and it is freely admitted that no human in-

strument is perfect. But as we can not resort to a convocation of angels, we must employ the best human agency to be obtained. Here the judgment of the fathers is sound:

It was desirable that the sense of the people should operate in the choice of the person to whom so important a trust was to be confided. This end will be answered by committing the right of making it, not to any preestablished body, but to men chosen for the special purpose and at the particular juncture.

And again:

The mode least favorable to intrigue and corruption, that in which the unbiased voice of the people would be most attended to, and that which will be least likely to terminate in violence and usurpation, ought to be adopted.

If the function of the Electors were made a reality they, as average honorable Americans selected by their fellow citizens for a solemn trust, would feel their responsibility keenly. They would be protected and restrained by a thorough corrupt-practices law, their brief official existence would be spent and their duty performed in the very glare of publicity. It takes but a feeble optimism to predict that corruption among them would be practically nonexistent. A sentiment of official integrity would grow around an Elector which would soon become traditional. It would be as unseemly to attempt to bias an Elector as a judge on the bench. Obviously it would be impossible for a President to communicate with the Electors. They would assemble to make their choice within 30 days of their own election. Their outgoings and incomings meantime, as well as the President's, would be observed of all men. If not restrained by a high sense of propriety he would be hindered by the difficulties of the situation from exerting any influence over them, and they should be prohibited by law from receiving from the person elected any office or benefit directly or indirectly. His road to reelection then would not be the corraling of delegates to the convention, or giving and promising office, or favoring corporations, but an able and patriotic administration of the Government. Upon the select body of men who would govern destiny none of the evil influences referred to above would have any power.

It would seem that before attempting to amend the Constitution either as to the President's term and eligibility or as to the manner of electing him, we ought to try the results of making the constitutional method effective. Give the Constitution a chance. To institute this reform a brief act should be passed at an early day prohibiting the nominating of candidates for President and Vice President by convention or otherwise, providing for a presidential preference vote addressed to the electors, and requiring the assembling of the next Electoral College for the purpose of nominating. Thus would the public be informed in advance. Afterwards the details could be carefully studied and further provisions found necessary could be made in a supplemental act or in the appropriation bill for the proper year.

In no reactionary spirit, therefore, but with views thoroughly progressive, the writer urges a return for relief to the wisdom of the fathers by making effective their admirable device—the Electoral College. This may be accomplished by a surprisingly simple enact-

ment, and in conclusion of the argument there is here submitted a draft of what may be called a bill of assistance, as follows:

A BILL To assist the Presidential Electors in the performance of their duties.

Whereas the Constitution confers on the Electors the full power to elect the President and Vice President of the United States; and

Whereas it was the original plan of the authors of the Constitution that the Electors should assemble in one place and perform their function as a united body or college, but this plan was changed in view of the difficulties of travel of that time; and

Whereas by reason of developed political capacity of the people it is now believed to be possible and right for the voters to express their preferences among candidates for office: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the years in which a President is to be elected there shall be placed on the ballots used in voting for Representatives in Congress words to this effect, "Here the voter may write the name of his choice for President of the United States." and below them shall be provided a blank line; and when the ballots are counted in each State all names written thereon by the voters which have received more than one thousand votes each shall be tabulated, with the number of votes for each, and the tabulation shall be certified to the Electors and shall be published; and nominations for the office of President or Vice President in any manner other than as herein prescribed shall be unlawful, and every person who shall attempt to effect such unlawful nominations shall be liable to a fine of not less than \$200 and imprisonment for not less than two months.

SEC. 2. The Electors appointed in all the States shall assemble as the Electoral College within thirty days from their appointment, to confer respecting and to nominate suitable persons for President and Vice President. They shall be allowed adequate compensation and provision for expenses and such secretaries, clerks, and other assistants as they may find necessary, and appropriations shall be made therefor as for other expenses of the Government.



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